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13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE DISTRICT OF NEVADA**

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 WALKER RIVER PAIUTE TRIBE,

18 Plaintiff-Intervenor,

19 vs.

20 WALKER RIVER IRRIGATION DISTRICT,  
21 a corporation, *et al.*

22 Defendants.

23 WALKER RIVER IRRIGATION DISTRICT,

24 Petitioner,

25 STATE OF NEVADA,

26 Petitioner-Intervenor,

27 vs.

28 CALIFORNIA STATE WATER RESOURCES  
CONTROL BOARD, *et al.*,

Respondent-Intervenor.

WALKER RIVER PAIUTE TRIBE AND  
UNITED STATES OF AMERICA,

Cross-Claimants,

vs.

WALKER RIVER IRRIGATION DISTRICT,  
a corporation, *et al.*

Cross-Defendants.

Mar 24 5 30 PM '94

By JNH

In Equity C-125  
Subfile C-125-B

WALKER RIVER PAIUTE  
TRIBE'S RESPONSE TO  
THE UNITED STATES'  
MOTION FOR  
INSTRUCTIONS AND  
ORDER

1 In the United States' Motion for Instructions and Order of  
2 April 6, 1994 ("U.S. Mot."), the United States requests the Court  
3 to clarify whether groundwater users are to be joined in this  
4 case pursuant to the order requiring joinder of all water users  
5 of the Walker River. See Order (Oct. 27, 1992). The Walker River  
6 Paiute Tribe ("the Tribe") files the following response to the  
7 United States' request.

### 8 I. INTRODUCTION

9 On October 27, 1992, the Court ordered the Tribe and the  
10 United States to "join as parties and serve all existing  
11 claimants to water of the Walker River and its tributaries."  
12 Order at 5. The Court reasoned that:

13 In this case the Tribe and the United States  
14 want the Court to recognize additional water  
15 rights for the Tribe and integrate these  
16 rights into the Decree. Such a recognition  
17 might have the effect of reducing the water  
18 allocated to other federal rights holders or  
19 altering the priority which their allocation  
20 is given. Such a recognition may also give  
21 the Tribe's newly recognized rights priority  
22 over claimants who acquired their rights  
23 through a state permit. Thus, the claimants  
24 to the water of the Walker River clearly have  
25 an interest in the action.

26 Id. at 5-6. Previously, the only rights recognized in these  
27 proceedings have involved the use of the surface waters of the  
28 Walker River and its tributaries. Indeed, the Tribe's pending  
claims for the recognition of additional water rights are limited  
to the use of the surface waters of the Walker River. See United  
States v. Walker River Irrigation Dist., No. C-125, *Decree* (D.  
Nev. April 14, 1936), as amended by, *Stipulation and Agreement for Entry of*

1 amended Final Decree pursuant to Writ of Mandate of the Circuit Court of Appeals - Ninth  
 2 Circuit - and also amended Decree entered herein on April 15, 1936 to Clarify Certain  
 3 Provisions Thereof and Order for Entry of Amended Final Decree to Conform to Writ of  
 4 Mandate, etc. (April 14, 1940); Answer to First Amended Petition, and  
 5 Counterclaim and Cross-Claim of the Walker River Paiute Tribe ("Tribe's  
 6 Counterclaim") at 6-9 (Mar. 17, 1992). Despite the previously  
 7 limited nature of these proceedings, the case is now expanded to  
 8 include all water users of the Walker River and its Tributaries.  
 9 Prior to joining all these claimants, the United States asks the  
 10 Court to clarify whether groundwater users were contemplated as  
 11 part of "all claimants to water of the Walker River and its  
 12 tributaries," who should be joined in this subproceeding. See  
 13 Memorandum of Points and Authorities in Support of Motion For Instructions and Order  
 14 at unnumbered 2 (April 6, 1994) ("U.S. Mem.").

15  
 16 Because it appears highly likely that groundwater usage in  
 17 the Walker River basin affects the use of surface water in the  
 18 basin, the Tribe submits that all groundwater users should be  
 19 joined.

## 20 II. BACKGROUND

21 The United States initially brought suit in C-125 to  
 22 establish rights to the surface waters of the Walker River and  
 23 its tributaries on behalf of the Tribe. See United States v.  
 24 Walker River Irrigation Dist., 11 F. Supp. 158 (1935), reversed  
 25 in part, 104 F.2d 334 (1939). The district court noted that the  
 26 United States filed suit "against 253 defendants . . . [to quiet  
 27 title to] 150 cubic feet per second of time of the . . . [natural  
 28

1 flow] of said rivers and their tributaries . . . ." Id. at 159.  
2 The district court reduced the United States' claims to the  
3 amount of water that the Tribe was actually using, holding that  
4 "[t]he rights of the government . . . are to be adjudged,  
5 measured, and administered in accordance with the laws of  
6 appropriation as established in the state of Nevada." Id. at 167.

7 The Court of Appeals reversed the district court and held  
8 that water rights for the benefit of the Tribe were reserved by  
9 implication when the reservation was established. See United  
10 States v. Walker River Irrigation Dist., 104 F.2d 334, 339-340  
11 (9th Cir. 1939). The court, however, did not increase the rights  
12 established by the district court, finding "the United States to  
13 be entitled to the continuous flow of 26.25 cubic feet of water  
14 per second to be diverted from the Walker River . . . and  
15 enjoining the defendants from preventing or interfering with the  
16 natural flow of the described quantities of water in the channels  
17 of the stream and its tributaries to and upon the reservation."  
18 Id. at 340. The decreed right was based on the water that had  
19 been put to use by the Tribe since the creation of the  
20 Reservation and prior to the time of the decision. Id.

21 The water rights of the water users named as defendants in  
22 the suit were also determined. The Final Decree reflects the  
23 opinion of the court of appeals, and sets out the priorities and  
24 quantities of the various parties to the adjudication. The Final  
25 Decree provides: "This decree shall be deemed to determine all of  
26 the rights of the parties to this suit and their successors in  
27 interest in and to the waters of the Walker River and its tribu-  
28

1 taries as of the 14th day of April, 1936. . ." See Decree at 72  
2 and *Stipulation and Agreement for Entry of Amended Final Decree Pursuant to Writ of*  
3 *Mandate of the Circuit Court of Appeals - Ninth Circuit - And also Amended Decree*  
4 *Entered Herein on April 15, 1936 to Clarify Certain Provisions Thereof* ¶ 2, at 3  
5 (April 22, 1940). No groundwater uses were adjudicated.

6 On March 17, 1992, the Tribe filed claims for additional  
7 water for use on the lands restored to the Reservation after  
8 entry of the final decree and for storage in Weber Reservoir.  
9 See Tribe's Counterclaim at 6-9. The United States filed a  
10 counterclaim which is substantially similar to the Tribe's  
11 counterclaim, on July 22, 1992. See *Counterclaim of the United States of*  
12 *America* (July 22, 1992).

13 The Walker River Irrigation District ("WRID") and the State  
14 of Nevada filed motions to dismiss the Tribe's and the United  
15 States' counterclaims, or in the alternative to require that the  
16 United States and Tribe join all claimants to the waters of the  
17 Walker River and its tributaries. See *Walker River Irrigation District's*  
18 *Points and Authorities in Support of Motions to Dismiss Counterclaims; to Require Joinder*  
19 *of Parties; and to Require Service of Process in Accordance with Rule 4 of the Federal Rules*  
20 *of Civil Procedure* (Aug. 3, 1992) ("WRID's Motion to Join"); *State of*  
21 *Nevada's Preliminary Threshold Motions Re Dismissal of Counterclaims, Additional Parties*  
22 *and Service of Process* (Aug. 3, 1992). WRID and Nevada asserted that  
23 the United States and Tribe's had to join all water users because  
24 "water rights on a stream system like that of the Walker River  
25 are interdependent with respect to all water rights and all water  
26  
27  
28

users." See WRID's Motion to Join at 12 (citing favorably, California v. United States, 235 F.2d 647, 663, 664 (9th Cir.); and United States v. District Ct. in & for Eagle County, 401 U.S. 520, 525-526 (1971)). Specifically, WRID and Nevada asserted that the United States and Tribe must join "claimants who have established water rights under California or Nevada law after the date of the Walker River Decree. . . . [in order to] provide effective and complete relief and repeated litigation involving essentially the same subject matter will be avoided." Id. at 13-15 (citations omitted).

The Court granted WRID's and Nevada's request, "the District's and the State of Nevada's motions (documents #11, #13) to require joinder of parties are granted." See Order at 7. The order is silent as to whether it contemplates the inclusion of groundwater uses into the case. The Tribe submits that the groundwater users of the Walker River Basin should be joined, in order to be consistent with the all-inclusive nature of WRID's and Nevada's request, the law of Nevada and California regarding the use of groundwater, and the policy of judicial efficiency and finality.

### III. ARGUMENT

#### A. INTRODUCTION.

In seeking to expand the scope of this litigation, WRID and Nevada previously argued that all water users should be joined in this subproceeding because:

Here the waters of the Walker River and its tributaries form a single res and are analogous to one parcel of land in which

several parties are claiming an interest. The subject matter of the Tribe's and United States' claims involve how this single res is to be divided among all water right claimants and thus all water right claimants clearly have an interest in its subject matter.

See *State of Nevada's and Walker River Irrigation District's Reply Points and Authorities in Support of Motion to Dismiss Counterclaims; to Require Joinder of Parties; and to Require Service of Process in Accordance with Rule 4 of the Federal Rules of Civil Procedure* at 12 (Oct. 5, 1992).

Because groundwater users may have an interest in the waters that are the subject of this proceeding, they should be joined in the case. The use of groundwater has the potential to interfere with the rights claimed by the Tribe under federal law, and therefore the Court has ample authority to adjudicate the relationship between the tribal rights and those of groundwater users in the basin. In any event, there is no conflict between the state ground water law and the joinder of groundwater users in this case.

#### B. NEVADA GROUNDWATER LAW.

All waters, surface and groundwater, are appropriable in Nevada. See NEV. REV. STAT. §§ 534.010-534.190 (1991 & Supp. 1993). Chapter 533 addresses surface waters and provides: "Subject to existing rights, . . . all water may be appropriated for beneficial use as provided in this chapter and not otherwise." NEV. REV. STAT. § 533.030 (1) (1991 & Supp. 1993). The groundwater chapter similarly states: "All underground waters within the boundaries of the state belong to the public, and, subject to all existing rights to the use thereof, are

1 subject to appropriation for beneficial use only under the laws  
2 of this state relating to the appropriation and use of water and  
3 not otherwise." NEV. REV. STAT. § 534.020(1) (1991 & Supp. 1993).

4 "It appears that Nevada itself may recognize the potential  
5 interrelationship between surface and ground water since Nevada  
6 applies the law of prior appropriation to both." Cappaert v.  
7 United States, 426 U.S. 128, 142 (1976) (citing NEV. REV. STAT.  
8 §§ 533.010 et seq., 534.020, 534.080, 534.090 (1973)). In short,  
9 groundwater users may affect the use of surface waters and in  
10 turn, may be affected by surface water uses. Because groundwater  
11 users may be competing claimants to the water of the Walker River  
12 and its tributaries, they should be joined as parties.

### 13 C. CALIFORNIA GROUNDWATER LAW.

14 In California, the administrative process for appropriation  
15 of waters is limited "to surface waters, and to subterranean  
16 streams flowing through known and definite channels." CAL. WATER  
17 CODE § 1200 (West 1971). There is no administrative process in  
18 California which regulates ground water production. Instead,  
19 ground water issues in California are generally resolved through  
20 adjudications.

21 In California, all water use is governed by Article 10, § 2  
22 of the State Constitution which provides in part:

23 The right to water or to the use or flow of  
24 water in or from any natural stream or water  
25 course in this State is and shall be limited  
26 to such water as shall be reasonably required  
27 for the beneficial use to be served, and such  
28 right does not and shall not extend to the  
waste or unreasonable use or unreasonable  
method of use or unreasonable method of  
diversion of water.



1 CAL. CONST. art. 10, § 2 (1976 & Supp. 1994) (formerly art. XIV,  
2 § 3).

3 Article 10 applies to both groundwater and surface waters,  
4 and rights to ground water have been adjudicated pursuant to this  
5 article. See Wright v. Goleta Water Dist., 219 Cal. Rptr. 740,  
6 750 (1985), review denied Mar. 12, 1986; see also City of Los  
7 Angeles v. City of San Fernando, 537 P.2d 1250 (1975); Tulare  
8 Dist. v. Lindsay-Strathmore Dist., 45 P.2d 972 (1935); Katz v.  
9 Walkinshaw, 74 P. 766 (1903). Indeed, the court in Los Angeles  
10 recognized that the allocation of ground water is subject  
11 historic use, and the first in time appropriation principles.  
12 Id. at 1260-1261.

13 In sum, the adjudication of the groundwater uses of the  
14 Walker River Basin in California is not inconsistent with  
15 California law. Moreover, these water users should be joined in  
16 this subproceeding as they may also be claimants to the waters of  
17 the Walker River and its tributaries.

#### 18 D. GROUNDWATER USERS SHOULD BE JOINED IN THIS PROCEEDING.

19 The Court granted WRID's and Nevada's request that the  
20 United States and Tribe join all claimants pursuant to Rule 19 of  
21 the Federal Rules of Civil Procedure. See WRID's Joinder  
22 Memorandum at 13. Rule 19 of the Federal Rules of Civil  
23 Procedure requires joinder if:

- 24 (1) in the person's absence complete relief  
25 cannot be accorded among those already  
26 parties, or (2) the person claims an interest  
27 relating to the subject of the action and is  
28 so situated that the disposition of the  
action in the person's absence may (i) as a  
practical matter impair or impede the

1 person's ability to protect that interest or  
2 (ii) leave any of the persons already parties  
3 subject to a substantial risk of incurring  
4 double, multiple, or otherwise inconsistent  
5 obligations by reason of the claimed  
6 interest.

7 FED. R. CIV. P. 19(a)(1), (2) (1994).

8 WRID and Nevada insist on the joinder of all claimants to  
9 the waters of the Walker River because:

10 '[C]omplete relief cannot be accorded among  
11 those already parties' . . . if there is a  
12 possibility of repeated litigation involving  
13 the same subject matter. . . . the ability of  
14 claimants to water rights who have not been  
15 joined to protect their interests may be  
16 impaired or impeded by disposition of the  
17 action. . . . [And] [w]ater rights on a  
18 single stream system are interrelated. The  
19 obligations of Nevada and the Irrigation  
20 District with respect to any decision by the  
21 Court on the Tribe's claimed rights may well  
22 be inconsistent with their obligations to  
23 other water right holders who. . . were not  
24 joined.

25 Nevada and WRID's Reply at 11-14 (citations omitted).

26 "[T]he United States can protect its water from subsequent  
27 diversion, whether the diversion is of surface or groundwater."  
28 Cappaert v. United States, 426 U.S. at 141-143. To ensure  
complete relief to all users of the waters of the Walker River  
Basin, to protect all users interests in the system, and to avoid  
the risk of possible inconsistent obligations, all groundwater  
users in Nevada and California should be joined in these  
proceedings.

#### 29 IV. CONCLUSION

30 The groundwater in the Walker River basin appears to be  
31 hydrologically connected to the surface water of the Walker River

1 and its tributaries and the extensive groundwater uses have had  
2 an impact on the surface waters of the Walker River and its  
3 tributaries. Therefore, the groundwater users should be joined  
4 in this sub-proceeding.

5 Dated: 5/23/94

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of the foregoing Walker River Paiute Tribe's Response to the United States' Motion for Instructions and Order, via U.S. Mail, first-class postage prepaid thereon, this 23<sup>rd</sup> day of May 1994, addressed to:

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